

FIRST REGULAR SESSION  
[P E R F E C T E D]  
SENATE COMMITTEE SUBSTITUTE FOR  
**SENATE BILL NO. 133**  
96TH GENERAL ASSEMBLY

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Reported from the Committee on Transportation, February 24, 2011, with recommendation that the Senate Committee Substitute do pass.

Senate Committee Substitute for Senate Bill No. 133, adopted March 2, 2011.

Taken up for Perfection March 2, 2011. Bill declared Perfected and Ordered Printed.

TERRY L. SPIELER, Secretary.

0709S.02P

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**AN ACT**

To repeal section 227.107, RSMo, and to enact in lieu thereof one new section relating to highway design-build project contracts.

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*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Section 227.107, RSMo, is repealed and one new section  
2 enacted in lieu thereof, to be known as section 227.107, to read as follows:

227.107. 1. Notwithstanding any provision of section 227.100 to the  
2 contrary, as an alternative to the requirements and procedures specified by  
3 sections 227.040 to 227.100, the state highways and transportation commission  
4 is authorized to enter into highway design-build project contracts. The total  
5 number of highway design-build project contracts awarded by the commission in  
6 any state fiscal year shall not exceed two percent of the total number of all state  
7 highway system projects listed in the commission's approved statewide  
8 transportation improvement project for that state fiscal year. Authority to enter  
9 into design-build projects granted by this section shall expire on July 1, [2012]  
10 **2018**, unless extended by statute.

11 2. Notwithstanding provisions of subsection 1 of this section to the  
12 contrary, the state highways and transportation commission is authorized to  
13 enter into additional design-build contracts for the design, construction,  
14 reconstruction, or improvement of Missouri Route 364 as contained in any county  
15 with a charter form of government and with more than two hundred fifty  
16 thousand but fewer than three hundred fifty thousand inhabitants and in any

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

17 county with a charter form of government and with more than one million  
18 inhabitants, and the State Highway 169 and 96th Street intersection located  
19 within a home rule city with more than four hundred thousand inhabitants and  
20 located in more than one county. The state highways and transportation  
21 commission is authorized to enter into an additional design-build contract for the  
22 design, construction, reconstruction, or improvement of State Highway 92,  
23 contained in a county of the first classification with more than one hundred  
24 eighty-four thousand but fewer than one hundred eighty-eight thousand  
25 inhabitants, from its intersection with State Highway 169, east to its intersection  
26 with State Highway E. **The state highways and transportation commission**  
27 **is authorized to enter into an additional design-build contract for the**  
28 **design, construction, reconstruction, or improvement of US 40/61 I-64**  
29 **Missouri River Bridge as contained in any county with a charter form**  
30 **of government and with more than one million inhabitants and any**  
31 **county with a charter form of government and with more than two**  
32 **hundred fifty thousand but fewer than three hundred fifty thousand**  
33 **inhabitants.** The authority to enter into a design-build highway project under  
34 this subsection shall not be subject to the time limitation expressed in subsection  
35 1 of this section.

36 3. For the purpose of this section a "design-builder" is defined as an  
37 individual, corporation, partnership, joint venture or other entity, including  
38 combinations of such entities making a proposal to perform or performing a  
39 design-build highway project contract.

40 4. For the purpose of this section, "design-build highway project contract"  
41 is defined as the procurement of all materials and services necessary for the  
42 design, construction, reconstruction or improvement of a state highway project in  
43 a single contract with a design-builder capable of providing the necessary  
44 materials and services.

45 5. For the purpose of this section, "highway project" is defined as the  
46 design, construction, reconstruction or improvement of highways or bridges under  
47 contract with the state highways and transportation commission, which is funded  
48 by state, federal or local funds or any combination of such funds.

49 6. In using a design-build highway project contract, the commission shall  
50 establish a written procedure by rule for prequalifying design-builders before  
51 such design-builders will be allowed to make a proposal on the project.

52 7. In any design-build highway project contract, whether involving state

53 or federal funds, the commission shall require that each person submitting a  
54 request for qualifications provide a detailed disadvantaged business enterprise  
55 participation plan. The plan shall provide information describing the experience  
56 of the person in meeting disadvantaged business enterprise participation goals,  
57 how the person will meet the department of transportation's disadvantaged  
58 business enterprise participation goal and such other qualifications that the  
59 commission considers to be in the best interest of the state.

60 8. The commission is authorized to issue a request for proposals to a  
61 maximum of five design-builders prequalified in accordance with subsection 6 of  
62 this section.

63 9. The commission may require approval of any person performing  
64 subcontract work on the design-build highway project.

65 10. Notwithstanding the provisions of sections 107.170, and 227.100, to  
66 the contrary, the commission shall require the design-builder to provide to the  
67 commission directly such bid, performance and payment bonds, or such letters of  
68 credit, in such terms, durations, amounts, and on such forms as the commission  
69 may determine to be adequate for its protection and provided by a surety or  
70 sureties authorized to conduct surety business in the state of Missouri or a  
71 federally insured financial institution or institutions, satisfactory to the  
72 commission, including but not limited to:

73 (1) A bid or proposal bond, cash or a certified or cashier's check;

74 (2) A performance bond or bonds for the construction period specified in  
75 the design-build highway project contract equal to a reasonable estimate of the  
76 total cost of construction work under the terms of the design-build highway  
77 project contract. If the commission determines in writing supported by specific  
78 findings that the reasonable estimate of the total cost of construction work under  
79 the terms of the design-build highway project contract is expected to exceed  
80 two-hundred fifty million dollars and a performance bond or bonds in such  
81 amount is impractical, the commission shall set the performance bond or bonds  
82 at the largest amount reasonably available, but not less than two-hundred fifty  
83 million dollars, and may require additional security, including but not limited to  
84 letters of credit, for the balance of the estimate not covered by the performance  
85 bond or bonds;

86 (3) A payment bond or bonds that shall be enforceable under section  
87 522.300 for the protection of persons supplying labor and material in carrying out  
88 the construction work provided for in the design-build highway project

89 contract. The aggregate amount of the payment bond or bonds shall equal a  
90 reasonable estimate of the total amount payable for the cost of construction work  
91 under the terms of the design-build highway project contract unless the  
92 commission determines in writing supported by specific findings that a payment  
93 bond or bonds in such amount is impractical, in which case the commission shall  
94 establish the amount of the payment bond or bonds; except that the amount of the  
95 payment bond or bonds shall not be less than the aggregate amount of the  
96 performance bond or bonds and any additional security to such performance bond  
97 or bonds; and

98 (4) Upon award of the design-build highway project contract, the sum of  
99 the performance bond and any required additional security established under  
100 subdivisions (2) and (3) of this subsection shall be stated, and shall be a matter  
101 of public record.

102 11. The commission is authorized to prescribe the form of the contracts  
103 for the work.

104 12. The commission is empowered to make all final decisions concerning  
105 the performance of the work under the design-build highway project contract,  
106 including claims for additional time and compensation.

107 13. The provisions of sections 8.285 to 8.291 shall not apply to the  
108 procurement of architectural, engineering or land surveying services for the  
109 design-build highway project, except that any person providing architectural,  
110 engineering or land surveying services for the design-builder on the design-build  
111 highway project must be licensed in Missouri to provide such services.

112 14. The commission shall pay a reasonable stipend to prequalified  
113 responsive design-builders who submit a proposal, but are not awarded the  
114 design-build highway project.

115 15. The commission shall comply with the provisions of any act of  
116 congress or any regulations of any federal administrative agency which provides  
117 and authorizes the use of federal funds for highway projects using the  
118 design-build process.

119 16. The commission shall promulgate administrative rules to implement  
120 this section or to secure federal funds. Such rules shall be published for comment  
121 in the Missouri Register and shall include prequalification criteria, the make-up  
122 of the prequalification review team, specifications for the design criteria package,  
123 the method of advertising, receiving and evaluating proposals from  
124 design-builders, the criteria for awarding the design-build highway project based

125 on the design criteria package and a separate proposal stating the cost of  
126 construction, and other methods, procedures and criteria necessary to administer  
127 this section.

128         17. The commission shall make a status report to the members of the  
129 general assembly and the governor following the award of the design-build  
130 project, as an individual component of the annual report submitted by the  
131 commission to the joint transportation oversight committee in accordance with the  
132 provisions of section 21.795. The annual report prior to advertisement of the  
133 design-build highway project contracts shall state the goals of the project in  
134 reducing costs and/or the time of completion for the project in comparison to the  
135 design-bid-build method of construction and objective measurements to be utilized  
136 in determining achievement of such goals. Subsequent annual reports shall  
137 include: the time estimated for design and construction of different phases or  
138 segments of the project and the actual time required to complete such work  
139 during the period; the amount of each progress payment to the design-builder  
140 during the period and the percentage and a description of the portion of the  
141 project completed regarding such payment; the number and a description of  
142 design change orders issued during the period and the cost of each such change  
143 order; upon substantial and final completion, the total cost of the design-build  
144 highway project with a breakdown of costs for design and construction; and such  
145 other measurements as specified by rule. The annual report immediately after  
146 final completion of the project shall state an assessment of the advantages and  
147 disadvantages of the design-build method of contracting for highway and bridge  
148 projects in comparison to the design-bid-build method of contracting and an  
149 assessment of whether the goals of the project in reducing costs and/or the time  
150 of completion of the project were met.

151         18. The commission shall give public notice of a request for qualifications  
152 in at least two public newspapers that are distributed wholly or in part in this  
153 state and at least one construction industry trade publication that is distributed  
154 nationally.

155         19. The commission shall publish its cost estimates of the design-build  
156 highway project award and the project completion date along with its public  
157 notice of a request for qualifications of the design-build project.

158         20. If the commission fails to receive at least two responsive submissions  
159 from design-builders considered qualified, submissions shall not be opened and  
160 it shall readvertise the project.

161           21. For any highway design-build project constructed under this section,  
162 the commission shall negotiate and reach agreements with affected  
163 railroads. Such agreements shall include clearance, safety, insurance, and  
164 indemnification provisions, but are not required to include provisions on  
165 right-of-way acquisitions.

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